

City of Willoughby Hills

Interoffice Memo

Date: Tuesday, November 13, 2018

To: Council President Fellows, Council Members and Council Clerk Savage

From: Robert M. Weger, Mayor/Safety Director

Subject: Veto of Ordinance 2018-47 Due to Legal and Ethical Violations and False and Misleading Text in Ordinance

I veto Ordinance 2018-47 based upon legal and ethical violations, as well as false and misleading text utilized in said Ordinance.

How can five Council members initiate a lawsuit, hire an attorney, contract with the lawyer for an attorney/client relationship, file the lawsuit without an ordinance and no prior deliberations in the "sunshine" and then ask via Ordinance 2018-47 for public funds to pay for this illegal and unethical action?

I. LEGAL VIOLATIONS OF ORDINANCE 2018-47:

A majority of Council have authorized, contracted and instituted a lawsuit allegedly as "individual Council members" without any regard of the Willoughby Hills Charter 4.3, Ohio Revised Code Sections 733.59, 102.03(E), 715.01, 715.03, 731.05, and 731.17.

At the Council meeting of November 8, 2018, Councilwoman Pizmoht and Councilman Plecnik asserted, in essence, that this lawsuit titled " State, Ex Rel, Council of the City of Willoughby Hills, Ohio, Individually and as Taxpayers, Nancy E. Fellows, John Plecnik, David Fiebig, Janet Majka, Laura Pizmoht and City of Willoughby Hills (Plaintiffs); Lake County Case No. 18CV001677 (Complaint and verification attached hereto as Exhibit A) was done as "individual Council members" as opposed to "individual tax payers." This was Council's rationale for requesting public funds to pay for their individual/personal lawyer on the filing of this case.

The Complaint as verified by Councilwoman Pizmoht, confirms that she read the Complaint and the allegations therein and they are true and accurate to the best of her knowledge, information and belief. (See Exhibit A- Last Page -Verification Page)

Initially, it must be noted that the Council record is devoid of any action, vote, ordinance or discussion by Council instituting a lawsuit in the "sunshine." This Complaint (Exhibit A) was filed on October 5, 2018, and the first discussion of this subject matter was at the October 11,

2018, Council meeting, when Council proposed 2018-47, First Reading. Clearly, this is a violation of the Sunshine Law, ORC 107.

Ohio Revised Code 715.01 titled "General Powers of Municipal Corporations" specifically indicates that a municipal corporation can sue, but ORC 715.03, specifically indicates that such authority to do so must be done by an ordinance or resolution.

Additionally, this Council had to enter into a contract with Attorney Beck to form an Attorney/Client relationship for representation of said five Council members pursuant to ORC 731.05. An ordinance would be necessary to authorize said authority to institute suit and also the authority to make such contract. Again, none of this occurred, nor was it done in the "sunshine."

ORC 731.17 entitled "Passage of Ordinances and Resolutions" mandates that any ordinance, including an ordinance to institute a suit or contract with an outside party requires that the ordinance "be read on three different days, that the vote on the ordinance be taken by yeas or nays and entered upon the journal." Again, these actions were not taken by the "individual Council members" or the "Council members as a whole" prior to the filing of the lawsuit which occurred on October 5, 2018 (See Exhibit A).

Additionally, guidance on this legal issue can also be obtained from our Charter, Section 4.3, which reads in pertinent part as follows:

"SECTION 4.3 THE DEPARTMENT OF LAW.

4.32 Duties and Responsibilities ... When required to do so by resolution of Council, the Law Director shall **prosecute** or defend on behalf of the Municipality, all **complaints, suits**, and controversies in which the Municipality is a party, and such other suits, matters and controversies as he is directed to prosecute, by **resolution or ordinance.**"

Said Charter provision implies and directs that **an ordinance be utilized** before any lawsuit can be prosecuted or initiated.

The statements by Council members at the November 8, 2018 Council meeting, specifically by Council members Pizmoht and Plecnik, that their Complaint (Exhibit A) is brought forth by them as "individual Council members" as opposed to "individual tax payers" is not supported by the express heading, identification of the parties, or the prayer for relief in said Complaint (Exhibit A).

The Complaint heading specifically indicates that this is a "COMPLAINT (taxpayer action...)." Further, paragraph 4 of the Complaint (See Exhibit A) indicates that "the individual plaintiffs bring this complaint in their capacity as taxpayers pursuant to ORC 733.59 and as residents of Willoughby Hills, as well as in their capacity as Council members."

Ohio Revised Code 733.59 allows a taxpayer (not a corporate representative) to institute a lawsuit in his or her own name on behalf of a municipal corporation.

Noting the foregoing Sunshine Law violations, the lack of an ordinance for the initiation of a lawsuit and the express language contained in the Complaint, it is clear that this lawsuit is brought forward by a taxpayer in his individual/personal capacity and not in an individual corporate capacity.

At the November 8, 2018, Council meeting, Council stated that the Complaint was filed in their "capacity as Council members", in an attempt to justify the passage of Ordinance 2018-47 to expend funds to pay the legal fees of Attorney Gregory Beck. To that, I ask the following questions of Council:

- 1) When did Council decide to take this action as elected officials to hire Attorney Beck?
- 2) When and where was the meeting to discuss this?
- 3) Was it done in the "sunshine?"
- 4) If this was not done in a public forum, how can it be a "Council" action?
- 5) Isn't it true that individual Council members cannot act on behalf of the City, but rather Council is a body of Council members?
- 6) Was Councilwoman Lenz part of this action? If not, why was she excluded? Where is the documentation for this action?
- 7) What authority does Council have to hire or contract with an attorney without an ordinance providing for the same?
- 8) What authority do Council members have to allegedly file and institute a lawsuit in their corporate capacity without an ordinance?
- 9) Who signed the agreement to hire Attorney Beck?
- 10) Who prepared and reviewed the Attorney/Client contract allowing Attorney Beck to represent these "individual" Council members?
- 11) If the specifications are only included in the ordinance, where is the Attorney/Client contract documenting Attorney Beck conversations to come to the agreement listed therein?
- 12) Why did Council not follow the State of Ohio regulations by ensuring that funds were encumbered and budgeted for the expenditure for the legal fees of Attorney Beck **prior** to any work being done by Attorney Beck? As noted herein, this lawsuit was filed October 5, 2018, and work had already been performed by Attorney Beck prior to any Purchase Order being secured or executed in compliance with Ohio Law.

The legal requirements for hiring a lawyer, contracting with a lawyer and authorizing litigation on behalf of City Council or even individual Council members would still require an ordinance. As such, any attempt to pay for the legal services of Attorney Beck is illegal, unlawful and null and void *ab initio*.

II. ETHICAL VIOLATIONS OF ORDINANCE 2018-47:

Council voted to expend City funds for something that personally benefits them. This lawsuit by its express terms is a taxpayer action, which, as a matter of law, can only be done in personal/individual capacity and not in their individual Council capacity.

Each Council member that is named in the Complaint and is participating in furtherance of the Complaint, is in violation of the Ethics Law because they are attempting to use public funds for a personal/individual matter.

Council did not hold meetings in the sunshine nor follow any legal requirements for the prosecution/institution of a Complaint, yet made a decision to file a Complaint, which is ethically improper pursuant to ORC 107.

Council members **are not allowed** to participate, deliberate or take any acts and furtherance of a matter involving City business in which they are personally/individually involved in.

III. OTHER FALSE AND MISLEADING TEXT ERRORS CONTAINED IN ORDINANCE 2018-47:

The Ordinance itself has false and misleading language in its text that should have never been approved, such as:

- 1) The heading of Ordinance No. 2018-47 states "Mayor's Illegal Attempt to Remove Elected Officials." Council is misstating the facts and the law.
- 2) The fifth "Whereas" clause again states that I "illegally" attempted to remove 6 of the 7 members of Council. This is a false statement as this action has not been deemed "illegal."
- 3) The fifth "Whereas" clause identifies "Gregory Beck" as the "City Attorney." This is a clear misstatement of his position. He is NOT the City Attorney, nor Insurance Counsel since he has exhausted all funds available through the City's insurance carrier.
- 4) The seventh "Whereas" clause stated that "Mr. Beck felt obligated as an attorney representing the City to prevent his clients from being unlawfully removed..." This Council has no obligation to Mr. Beck, particularly at the expense of our taxpayers.
- 5) Section 5 of the Ordinance states that "all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council ...were held in compliance with all legal requirements..." There were never any meetings to justify the Complaint or payment of same.

IV. CONCLUSION:

Based upon the numerous legal and ethical violations, I urge Council to reconsider its position on Ordinance 2018-47. The illegal and unlawful actions of Council by attempting to pass this ordinance are too serious to ignore. Council has again passed an ordinance without the aid of a Law Director or proper legal advice. The absence of a Law Director is due to Council's failure to even take a vote to confirm my last two qualified appointments of Attorney James O'Leary and Attorney Joseph Diemert for the position of Law Director. This inaction by Council has lasted for approximately six months, leaving the City and City Council without any Law Director who would give advice to all, alleviating clear and obvious violations, such as what is contained in Ordinance 2018-47.

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

STATE, EX REL.
COUNCIL OF THE CITY OF
WILLOUGHBY HILLS, OHIO
INDIVIDUALLY AND AS
TAXPAYERS
NANCY E. FELLOWS
JOHN PLECNIK
DAVID FIEBIG
JANET MAJKA
LAURA PIZMOHT
35405 Chardon Road
Willoughby Hills, Ohio 44094

and

CITY OF WILLOUGHBY HILLS
35405 Chardon Road
Willoughby Hills, Ohio 44094

Plaintiffs,

Y.

ROBERT WEGER, MAYOR
38195 Dodds Hill
Willoughby Hills, Ohio 44094

and

MIKE DeWINE
OHIO ATTORNEY GENERAL
30 East Broad Street, 14th Floor
Columbus, Ohio 43215,

Defendants.

18CV001677

VINCENT A. CULOTTA

COMPLAINT

(Taxpayer Action, Declaratory Judgment, Injunctive Relief, Temporary Restraining Order and Preliminary Injunction)

Now come the plaintiffs, State, *ex rel.*, Council of the City of Willoughby Hills, Ohio, Nancy E. Fellows, John Plecnik, David Fiebig, Janet Majka, Laura Pizmoht, and the City of Willoughby Hills, and for their complaint against Roger Weger and Mike DeWine, herewith aver:

I. Introduction

1. The plaintiffs are duly elected and appointed members of City Council for the City of Willoughby Hills ("Willoughby Hills" or "City").

2. The plaintiffs are public officials whose service as council members is regulated by their respective terms of office, the City Charter and the Ohio Revised Code.

3. The individual plaintiffs, as public officials duly elected and appointed as representing the legislative branch of Willoughby Hills, are entitled to procedural and substantive due process for any attempted removal from office by any individual, including fraudulent and contrived efforts of the defendant, Robert Weger, ("Weger") as mayor of Willoughby Hills.

4. The individual plaintiffs bring this complaint in their capacity as taxpayers pursuant to O.R.C. § 733.59 and as residents of Willoughby Hills, as well as their capacity as council members protecting the interests of all residents within Willoughby Hills.

5. On October 3, 2018, defendant Weger sent six council members a letter entitled "Removal from Office," a copy of which is attached and marked as Exhibit A.

6. The putative notice of removal is false, baseless, unlawful, fraudulent and a media maneuver adopted by Weger for political gain and an effort to disparage and undermine the efforts of the plaintiffs as council members to balance the actions of the executive branch in Willoughby Hills.

II. Factual Background

7. The plaintiffs in their capacities as council members began their struggle with Weger in 2016 when Weger and the former law director failed to properly protect the City's interests when members of the administrative staff elected to unionize.

8. Despite constant requests by council members in 2016 and through the first half of 2017, Weger failed to advise council members of the union constituency, union demands for compensation and benefits, and any of the key terms and conditions of the collective bargaining agreement.

9. This bargaining agreement's terms were so outside the normal scope of compensation and benefits for municipal employees that several labor law firms advised the City that, if adopted, the bargaining agreement could bankrupt the City.

10. Nevertheless, Weger failed to properly advise council in July and August 2017 of the procedural issues regarding the proposed contract of the new union, and in so doing, allowed the union contract to be adopted by default, preventing council from rejecting the contract. Council members believe and have asserted in litigation that Weger's failure to properly advise council of the specific terms and conditions of the contract in a timely manner was to prevent council members from procedurally rejecting the contract, the terms of which conflicted with other union agreements and, again, could lead to the City's financial ruin.

11. When these issues were discovered and Weger and the former law director were confronted in September 2017 regarding this clear malfeasance and gross misconduct in violation of the responsibilities imposed upon Weger and the former law director as public officials charged with acting in the best interests of the City, the law director abruptly resigned, and Weger refused to propose a replacement law director.

12. Subsequently, Council, through ordinance, hired an acting law director to serve the City until the Mayor nominated and Council confirmed a replacement. Instead of working with Council to find a new permanent law director, Weger initiated litigation against the plaintiffs and the City, exacerbating the political issues, and leading to additional costs to be absorbed by the City, to the detriment of the residents.

13. Weger filed a second lawsuit which is currently pending, again attacking the efforts of council to counter balance Weger's efforts to support the terms of a union agreement that conflicts with the City budget and prevents the City from allocating funds to police and fire protection.

14. The plaintiffs and the City support the formation of the AFSCME union, but properly and legally questioned the constituency of the union, as members of any union are regulated by the Ohio Revised Code; the plaintiffs also support collective bargaining agreements, but the terms and conditions of those agreements must be approved by city council through a process that Weger intentionally thwarted.

15. Weger has admitted under oath that he supports the AFSCME union and the collective bargaining agreement, and believes that any attempt by council to challenge the constituency of the union is an unfair labor practice. Weger has admitted under oath that he will stipulate that the pending unfair labor practice complaint pending before the State Employment Relations Board ("SERB") is true, and provide no defense whatsoever to the SERB charges against the City, thereby subjecting the City to penalties and costs beyond the City's fiscal budget.

16. Weger has filed multiple lawsuits against the City and the individual plaintiffs under the guise of a taxpayer and mayor, while failing to properly administer executive function of the City and refusing to work with council on almost every issue of substance.

17. Instead seeking a collaborative solution, Weger sent a letter, allegedly ousting council members from their duly elected and appointed offices, contrary to the City charter and the Ohio Revised Code.

18. Weger has changed the locks on the City building, threatened the plaintiffs with arrest if the plaintiffs attempt to function in any capacity as council members, threatened the Police Chief Christopher Collins that he will be fired if he doesn't arrest council members if they discharge their duties under the City's charter, locked a legislative employee out of her office and refused to allow her to perform her duties under the charter, and told the media that he will hold illegal meetings to appoint a new council.

19. The actions of Weger are detrimentally harmful to the City, and are efforts to prevent council from performing the duties and responsibilities required under law and demanded by the electorate; Weger's actions are designed to destroy the check and balance process of democracy, and designed to allow the mayor to select through himself or his singular remaining council member a council consisting of individuals who will follow the exclusive dictates of Weger, and not the interests of residents.

20. Allowing Weger to oust elected officials contrary to law and without due process is fundamentally inconsistent with the democratic process, and designed to create a government run through a dictatorship rather than through the proper legislative, executive and judicial process.

21. The actions of Weger conflict with the City charter in many respects, including section 3.31-Powers— "The Council shall enact any and all legislation deemed necessary for the preservation and safety and welfare of the community and provide for the *orderly and desirable growth of the community for the efficient and orderly operation of the local government.*"

22. The unlawful actions of Weger conflict with the efficient and orderly operation of government and prevents the electorate from being fairly represented through the election process.

23. The City charter provides that the power and authority to remove from office any member of council "shall" rest with council pursuant to sections 3.15, and 9.32:

3.15: Removal from Office. The Council shall have the power to remove or expel from office any of its members in accordance with provisions outlined in Section 9.32.

9.32: Removal by Council. Council shall be the judge of the election and qualification of its own members and those employees... it may punish, suspend or remove from office any member of Council... provided that such... removal shall take place without providing written complaint setting forth the charge or charges... and at least ten (10) days before a hearing by Council on the matters specified in such complaint where the accused Council member... will be given an opportunity to be heard, present evidence or examine witness or witnesses in support of said charges..."

24. The plaintiffs were given no notice of Weger's unlawful intentions, were provided no opportunity to challenge the false allegations within the contrived and unlawful notice of removal, and have no adequate remedy at law.

25. Any claimed power of the mayor to remove a council member can only occur *after a determination by Council of a finding of gross misconduct, malfeasance, or non-feasance* by Council pursuant to Section 9.32. The charter does not provide any power of the mayor to independently determine or conclude for purposes of removal that any council member violated the general qualifications for office set forth in Section 9.2. A complete copy of the City charter is attached hereto and marked Exhibit B.

26. More importantly, the City charter specifically provides that council members are to be provided due process before removal from office as set forth in Sections 3.15 and 9.32. This due

process is necessary to protect the officials themselves, but also the rights of the voters who elected these officials.

27. In addition, there are three independent provisions within the Ohio Revised Code which set forth a process for removal of elected officials from office, namely, ORC 3.07, 731.45, and 733.72. Each provision provides notice and an opportunity to be heard:

§ 3.07 Forfeiture of office for misconduct in office.

Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings.

§ 731.45 Rules; journal; expulsion of members.

The legislative authority of a municipal corporation shall determine its own rules and keep a journal of its proceedings. It may punish or expel any member for disorderly conduct or violation of its rules, and declare his seat vacant for absence without valid excuse, where such absence has continued for two months. No expulsion shall take place without the concurrence of two thirds of all the members elected, and until the delinquent member has been notified of the charge against him and has had an opportunity to be heard.

§ 733.72 Charges against municipal officers filed with probate judge; proceedings.

When a complaint under oath is filed with the probate judge of the county in which a municipal corporation or the larger part thereof is situated, by any elector of the municipal corporation, signed and approved by four other electors thereof, the judge shall forthwith issue a citation to any person charged in the complaint for his appearance before the judge within ten days from the filing

thereof, and shall also furnish the accused and the village solicitor or city director of law with a copy thereof. The complaint shall charge any of the following:

....
(C) That a member of the legislative authority of the municipal corporation has received, directly or (C) That a member of the legislative authority or an officer of the municipal corporation has been guilty of misfeasance or malfeasance in office.

Before acting upon such complaint, the judge shall require the party complaining to furnish sufficient security for costs.

28. Weger was sent a letter on October 4, 2018 by council member Laura Pizmoht, demanding he retract his letter claiming he is removing council members from office, and advising Weger that the actions were not only unlawful, but likely criminal in nature and compounding with every action he takes. Since Weger has failed to nominate a viable candidate to council for law director, the only demand a tax payer can present to the City for recourse based on unlawful actions such as demonstrated here is to present the demand to Weger. Therefore, the only recourse the plaintiffs have in this case is through the courts.

29. Based on the unlawful conduct of Weger, the plaintiffs as taxpayers, and as members of City council are damaged, injured, and the City will suffer and has suffered irreparable loss if the conduct is not deemed void and enjoined.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

29. The actions of Weger are unlawful and unsupported by law, the City charter and Ohio and United States constitutions.

30. A controversy exists between the parties in that Weger asserts the City charter empowers the mayor to remove city officials, including council members without notice, without a hearing and without

an opportunity to be heard.

31. The plaintiffs assert that the conduct of Weger is unlawful, void *ab initio* and contrary to the City charter and Ohio law.

32. The City charter does not empower the mayor to remove council members. That power, based upon due process and the separation of powers, rests solely with City council; the charter provisions regarding the removal of council members is also consistent with the due process provisions within the Ohio Revised Code.

33. If the actions taken by Weger are not deemed void as a matter of law, the City and its residents will be harmed and the duly elected and appointed members of City council will be prevented from performing their responsibilities as determined by the electorate.

34. Weger's claim within the fraudulent notice of removal is based on the false premise that section 9.2 of the City charter empowers the mayor to remove council members without notice or opportunity to be heard in a quasi-judicial forum. Weger's premise is contrary to law, conflicts with other clear charter provisions and the dictates of Ohio law regulating the removal of public officials from elected office and violates every provision of due process available under state and federal law.

35. The plaintiffs demand the Court find that City council members cannot be removed by the Mayor and **EVEN IF** they could be, removal could not be at the whim of the mayor, but may only be removed pursuant to notice, an opportunity to be heard within a judicial or quasi-judicial procedure established by both the City charter and Ohio law.

SECOND CLAIM FOR RELIEF

(Temporary, Preliminary and Permanent Injunction)

36. The plaintiffs assert that the actions of Weger are unlawful and create irreparable harm to the

plaintiffs and the residents of Willoughby Hills.

37. Weger must be enjoined from locking the plaintiffs from the City building, removing their access to communicate with their constituents, interfering with the work of legislative employees like the council clerk, threatening incarceration or arrest of council members exercising their constitutional rights to be free from unlawful taking or interference of legitimate interests without due process, and from creating false representation of the electorate by assigning council members of his choosing and dictates.

38. At a minimum, during the pendency of this action, Weger must be preliminarily enjoined from preventing the plaintiffs from fulfilling their responsibilities as lawfully elected and appointed members of City council.

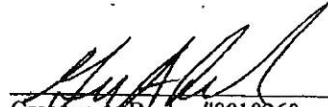
39. Given the egregious nature of Weger's unlawful actions, the Court must permanently enjoin Weger from any conduct in the future in which he attempts to remove City council members inconsistent with Ohio law and the City charter.

40. The plaintiffs also suffer monetary damages as a result of Weger's unlawful actions through the denial of compensation for public service, and the City has and will incur costs and legal fees through the prosecution of this action.

41. The plaintiffs have no adequate remedy at law unless Weger is permanently enjoined from his unlawful attempt to interfere with the legislative and democratic process.

WHEREFORE, plaintiffs demand that the Court declare that Weger's actions and attempt to remove the plaintiff council members from office is unlawful and void as a matter of law, and further issue a preliminary and permanent injunction restraining and prohibiting the defendant from any attempt to remove or interfere with the plaintiffs' charter-prescribed and constitutional rights to function as duly

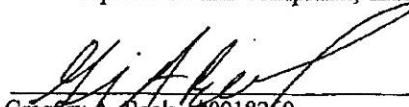
ected and appointed council members for Willoughby Hills. The plaintiffs further demand that Weger be ordered to restore the City municipal building to its pre-removal notice condition, including allowing council members and legislative employees free and unrestricted access, and that Weger pay the costs of this action, any damages sustained by any council member, and the reasonable attorney fees incurred by the plaintiffs for this action, along with any other order the Court deems just and proper.


Gregory A. Beck - #0018260
BAKER, DUBLIKAR, BECK,
WILEY & MATHEWS
400 South Main Street
North Canton, Ohio 44720
Phone: 330-499-6000
Fax: 330-499-6423
E-mail: beck@bakerfirm.com
Counsel for Plaintiffs

REQUEST FOR SERVICE

TO THE CLERK:

Please serve the defendants with summons and complaint by certified mail, return receipt requested, at the addresses listed in the caption of this complaint, making the same returnable according to law.

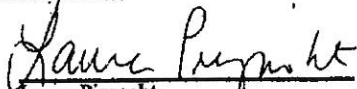

Gregory A. Beck - #0018260
BAKER, DUBLIKAR, BECK,
WILEY & MATHEWS

FILED
2018 OCT -5 PM 2:57
MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

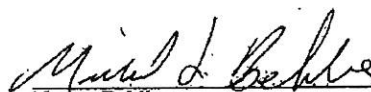
VERIFICATION

STATE OF OHIO }
LAKE COUNTY } SS:

Having been first duly sworn, I, Laura Pizmoht, state that I have read the foregoing
verified complaint and the allegations therein, and they are, to the best of my knowledge,
information and belief, true and accurate.


Laura Pizmoht

SWORN to before me and subscribed in my present this 5th day of October, 2018.


Notary Public
state of Ohio, Cuyahoga County
MICHAEL L. BEHNKE
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Aug. 21, 2020

NANCY R. FELLOWS
President of Council

JOHN PLECNIK
Vice President of Council

VICTORIA ANN SAVAGE, CMC
Clerk of Council

City of Willoughby Hills

DAVID M. FIEBIG
CHRISTOPHER HALLUM
LAURA LENZ
JANET MAJKA
LAURA PIZMOHT

ORDINANCE NO. 2018-47

AN ORDINANCE TO EMPLOY THE SERVICES OF GREGORY BECK AND BAKER, DUBLIKAR, BECK, WILEY & MATTHEWS, TO REPRESENT THE CITY OF WILLOUGHBY HILLS IN THE COMPLAINT FILED IN *WEGER V. CITY OF WILLOUGHBY HILLS*, LAKE COUNTY COMMON PLEAS COURT CASE NO. 18CV000964 AND IN *CITY OF WILLOUGHBY HILLS V. WEGER*, LAKE COUNTY COMMON PLEAS COURT {TEMPORARY RESTRAINING ORDER, COMPLAINT AND MAYOR'S ILLEGAL ATTEMPT TO REMOVE ELECTED OFFICIALS}; REPEALING CONFLICTING LEGISLATION AND DECLARING AN EMERGENCY.

WHEREAS, on May 17, 2018, Council enacted Ordinance No. 2018-27 to remove the Mayor as the sole negotiating agent acting on the part of the City in any matter in connection with the Willoughby Hills AFSCME Union, pursuant to ORC 4117.20(B); and

WHEREAS, on May 24, 2018 Mayor Robert M. Weger vetoed Ordinance No. 2018-27; and

WHEREAS, the Council of the City of Willoughby Hills set aside the Mayor's veto of Ordinance No. 2018-27, making that ordinance the law of the City; and

WHEREAS, Robert Weger, as an individual and taxpayer and in his official capacity as Mayor, filed a Complaint in the Common Pleas Court, Lake County, Ohio, styled *Weger v. City of Willoughby Hills*, Lake County Common Pleas Case No. 18CV000964, against the City of Willoughby Hills; allegedly against City Council and Council President Nancy Fellows in her official capacity; and

WHEREAS, Robert Weger threatened to remove any Council members who exercised their rights under the Charter to vote to put Charter Amendments on the ballot for approval by the electorate; and

WHEREAS, Robert Weger, attempted to illegally remove 6 of the 7 members of Council in the City of Willoughby Hills; through City Attorney Gregory Beck, a request for a temporary restraining order was filed on October 5, 2018; and

WHEREAS, visiting Judge Fuhry granted a temporary restraining order on October 9, 2018;

WHEREAS, the Mayor's attempted removing was based in part on the first two cases for which Mr. Beck was retained and Mr. Beck felt obligated as an attorney representing the City to prevent his clients from being unlawfully removed from office in the middle of said litigation and as a result of said litigation; and

WHEREAS, this Council desires to continue to authorize Gregory Beck and Baker, Dublikar, Beck, Wiley & Matthews, to represent the City's interests in the abovementioned Complaint.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. Gregory Beck and Baker, Dublikar, Beck, Wiley & Matthews shall continue to represent the City, in the Complaint of *Weger v. City of Willoughby Hills*, (Case No. 18CV000964).

SECTION 2. Gregory Beck and Baker, Dublikar, Beck, Wiley & Matthews shall represent *City of Willoughby Hills v. Weger*, Lake County Common Pleas Court {Temporary Restraining Order, Complaint and Mayor's illegal attempt to remove elected officials}.

SECTION 3 Mr. Beck and Baker, Dublikar, Beck, Wiley & Matthews shall be compensated monthly at an hourly rate of \$155/hour, for the services required in Section 1 and Section 2 of this ordinance.

SECTION 4. All Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

SECTION 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were held in compliance with all legal requirements, including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 6. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills, and further, so that the City's interests may be immediately protected; wherefore, this Ordinance shall take effect and be in force effective immediately, after its passage and approval according to law.

PASSED: _____, 2018

Nancy E. Fellows
President of Council

Submitted to the Mayor for his approval
on this _____ day of _____, 2018

Approved by the Mayor

_____, 2018

ATTEST: _____

Victoria Ann Savage, CMC
Clerk of Council

Robert M. Weger
Mayor